

Message Text

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ORIGIN NEA-10

INFO OCT-01 ISO-00 COME-00 EB-08 L-03 AF-10 ARA-10
EA-10 EUR-12 SIG-01 MMO-01 IO-13 AGRE-00 CEA-01
CIAE-00 DODE-00 FRB-03 H-01 INR-07 INT-05 LAB-04
NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15 STR-07
ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 SOE-02 OMB-01
DOE-11 XMB-02 OPIC-03 /162 R

DRAFTED BY USDOC/ITA:SMARCUSS:NEA/RA:DTMORRISON:YW
APPROVED BY NEA/RA:SEPALMER,JR
L/NEA:DSMALL
EB/BP:T SCHLENKER
AF/EPS:LWHITE (SUBS)
ARA/ECP:WSKOK (SUBS)
EA/EP:DSTEBBING (SUBS)
EUR/RPE:RLAMANTIA (SUBS)
NEA:SSOBER (SUBS)

-----055115 041816Z /70

R 040614Z PEB 78
FM SECSTATE WASHDC
TO ALL DIPLOMATIC POSTS
USINT BAGHDAD
AMCONSUL ALEXANDRIA
AMCONSUL DHAHRAN
XMT AMEMBASSY BANGUI
AMEMBASSY GABORONE
AMEMBASSY BRIDGETOWN
USINT HAVANA
AMEMBASSY KIGALI
AMEMBASSY LOME
AMEMBASSY MAPUTO
AMCONSUL MARTINIQUE
AMEMBASSY MASERU
AMEMBASSY MBABANE
AMEMBASSY NASSAU
AMEMBASSY PARAMARIBO
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AMEMBASSY PORT LOUIS
AMEMBASSY PORT MORESBY
AMEMBASSY SUVA

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USEC, USOECD

E.O. 11652: N/A

TAGS: ETRD

SUBJECT: FOREIGN BOYCOTTS: FINAL EXPORT ADMINISTRATION
ACT REGULATIONS

REF: A) STATE A-4288 (10/27/77); B) STATE 15730;
C) STATE 281768 (11/28/75); D) STATE 306773

1. FINAL COMMERCE DEPARTMENT EXPORT ADMINISTRATION ACT
(EAA) REGULATIONS WERE ISSUED ON JANUARY 18 TO TAKE EFFECT
ON THAT DAY. TEXT WAS PRINTED IN FEDERAL REGISTER ON
JANUARY 25. COPIES OF TEXT ARE BEING POUCHED TO ALL
ADDRESSEE POSTS.

2. FOLLOWING ARE THE MORE SIGNIFICANT CHANGES TO PROPOSED
REGULATIONS (SEE REFAIR) MADE BY FINAL REGULATIONS BASED
ON PUBLIC COMMENTS RECEIVED AND COMMERCE DEPARTMENT EFFORTS
TO ENSURE EFFECTIVE, WORKABLE PATTERN OF REGULATION
CONSISTENT WITH PROVISIONS OF EAA.

A. 369.1(C) DEFINITION OF "CONTROLLED IN FACT"

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UNDER FINAL REGULATIONS, NO FOREIGN SUBSIDIARY OR
AFFILIATE OF A U.S. CONCERN WILL BE DEEMED TO BE CONTROLLED
IN FACT. INSTEAD, CRITERIA IN PROPOSED REGS WHICH WOULD

HAVE CREATED CONCLUSIVE PRESUMPTION OF CONTROL WILL NOW
CREATE REBUTTABLE PRESUMPTIONS OF CONTROL. (CHANGE
RECOGNIZES THAT THERE MAY BE EXCEPTIONAL SITUATIONS IN
WHICH ONE OR MORE OF THE CRITERIA ARE MET BUT THE U.S.
CONCERN NONETHELESS LACKS CONTROL IN FACT OVER THE
ACTIVITIES OF THE SUBSIDIARY/AFFILIATE OR OVER A PARTICU-
LAR TRANSACTION OF THE SUBSIDIARY/AFFILIATE.)

B. U.S. COMMERCE - ANCILLARY SERVICES

UNDER FINAL REGULATIONS, ACQUISITION OF "ANCILLARY
SERVICES" FROM THE U.S. BY A FOREIGN SUBSIDIARY DOES NOT
BRING AN OTHERWISE WHOLLY FOREIGN TRANSACTION INTO U.S.
COMMERCE. ANCILLARY SERVICES ARE SERVICES PROVIDED
PRIMARILY TO THE SUBSIDIARY RATHER THAN THE SUBSIDIARY'S
CUSTOMER AND INCLUDE SUCH THINGS AS LEGAL, FINANCIAL,
ACCOUNTING, AND TRANSPORTATION SERVICES.

C. RISK OF LOSS CLAUSES

UNDER FINAL REGULATIONS, INTRODUCTION OF RISK OF LOSS
(I.E., PROVISIONS WHICH PLACE FINANCIAL RISK OF NON-

DELIVERY ON BLACKLISTED PERSONS) AFTER REPEAT AFTER
EFFECTIVE DATE OF REGULATIONS IS PRESUMED TO CONSTITUTE
EVASION. PRESUMPTION REBUTTABLE BY SHOWING THAT USAGE IS
CUSTOMARY WITHOUT REGARD TO BOYCOTTING OR NON-BOYCOTTING
CHARACTER OF COUNTRY TO WHICH IT RELATES AND THAT IT HAS
A LEGITIMATE (NON-BOYCOTT) PURPOSE. USE OF SUCH A PRO-
VISION BY PERSON WHO USED IT PRIOR REPEAT PRIOR TO
EFFECTIVE DATE OF REGULATIONS IS PRESUMED NOT REPEAT NOT
TO CONSTITUTE EVASION IF THE PROVISION HAD BEEN CUSTO-
MARILY USED BY THAT PERSON PRIOR TO THE EFFECTIVE DATE
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OF REGULATIONS.

D. LOCAL LAW EXCEPTION - PRODUCTS FOR "ONE'S OWN USE"

UNDER FINAL REGULATIONS, GOODS IMPORTED BY U.S. PERSON
RESIDENT IN A BOYCOTTING COUNTRY FOR RESALE IN RETAIL
OPERATION ARE NOT IMPORTED FOR ONE'S OWN USE AND,
THEREFORE, DO NOT QUALIFY UNDER LOCAL LAW EXCEPTION.
HOWEVER, GOODS IMPORTED FOR INCORPORATION INTO ANOTHER
PRODUCT IN MANUFACTURING OPERATION DO QUALIFY, AS DO
GOODS IMPORTED FOR INCORPORATION INTO A CONSTRUCTION
PROJECT, SO LONG AS THEY ARE OF A TYPE CUSTOMARILY
INCORPORATED INTO SUCH PROJECT AND BECOME PERMANENTLY
AFFIXED AS A FUNCTIONAL PART OF THE PROJECT.

-

E. EVASION

UNDER FINAL REGULATIONS, IT IS EVASION TO USE ANY
ARTIFICE OR DEVICE INTENDED TO PLACE PERSON AT A
COMMERCIAL DISADVANTAGE BECAUSE HE IS BLACKLISTED.
RISK OF LOSS PROVISIONS, AS DESCRIBED AND QUALIFIED ABOVE,
ARE TO BE EVALUATED UNDER THIS GENERAL RULE.

F. PRE-SELECTION SERVICES

UNDER FINAL REGULATIONS, PROVISION OF PRE-SELECTION
SERVICES BY U.S. PERSON DOES NOT DESTROY AVAILABILITY OF
UNILATERAL SELECTION EXCEPTION BUT SUCH SERVICES MUST BE
OF A KIND CUSTOMARILY PERFORMED BY PROVIDER OF THE
SERVICE OR INDUSTRY OF WHICH HE IS A PART AND MUST NOT
BE BOYCOTT BASED.

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G. INTENT

UNDER FINAL REGULATIONS, MOTIVE IS IRRELEVANT TO INTENT UNDER THE LAW. INSTEAD, REQUISITE INTENT FOR FINDING A VIOLATION EXISTS WHEN COMPLIANCE WITH BOYCOTT IS AT LEAST ONE OF THE REASONS FOR A PERSON'S ACTION. IT DOES NOT MATTER THAT PERSON ALSO HAD A LEGITIMATE BUSINESS REASON.

ALSO, INFORMATION IS DEEMED TO BE FURNISHED WITH THE REQUISITE INTENT IF PERSON FURNISHING THE INFORMATION KNOWS THAT IT WAS SOUGHT FOR BOYCOTT PURPOSES.

H. SERVICES PERFORMED WITHIN BOYCOTTING COUNTRY UNDER FINAL REGULATIONS

IN ORDER TO QUALIFY UNDER UNILATERAL SELECTION EXCEPTION, SERVICES SELECTED BY CUSTOMER IN A BOYCOTTING COUNTRY MUST BE OF A TYPE CUSTOMARILY PERFORMED ON SITE OR WITHIN THE COUNTRY AND THE PART PERFORMED WITHIN COUNTRY MUST BE A NECESSARY AND NOT INSIGNIFICANT PART OF THE TOTAL SERVICE PERFORMED.

3. POSTS SHOULD BE GUIDED BY FOLLOWING IN SITUATIONS WHERE FOREIGN BOYCOTT ISSUES MAY ARISE:

A. FOREIGN SERVICE POSTS AND U.S. OFFICERS/STAFF ARE COVERED BY THE PROHIBITIONS AND EXCEPTIONS OF THE EAA REGULATIONS AS THEY RELATE TO U.S. PERSONS (SEC. 369.2(D)). IN ADDITION TO SPECIFIC PROHIBITIONS SET FORTH IN EAA, THE ACT ALSO CONTINUES BROAD U.S. POLICY OF OPPOSING FOREIGN BOYCOTTS OF FRIENDLY COUNTRIES AND ENCOURAGING

PERSONS TO REFUSE TO TAKE ACTIONS WHICH HAVE EFFECT OF FURTHERING OR SUPPORTING SUCH BOYCOTTS -- EVEN IF SUCH ACTIONS ARE NOT PROHIBITED BY EAA. ACCORDINGLY, POSTS LIMITED OFFICIAL USE
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MAY NOT FURNISH INFORMATION IN BOYCOTT CONTEXT CONCERNING BUSINESS RELATIONSHIPS OF U.S. FIRMS WITH BOYCOTTED COUNTRIES OR BLACKLISTED PERSONS.

B. ALTHOUGH EMBASSY LOCAL EMPLOYEES ARE NOT SUBJECT TO PROVISIONS OF EAA, POSTS HAVE RESPONSIBILITY IN SUPERVISING THEIR ACTIVITIES FOR ENSURING THAT THEIR ACTIONS IN CARRYING OUT OFFICIAL DUTIES ARE FULLY CONSISTENT WITH U.S. LAW AND POLICY.

C. WE HAVE INITIATED A REVIEW OF OUR POLICY OF PROHIBITING POSTS FROM REPORTING ON OR OTHERWISE PROMOTING TRADE OPPORTUNITIES BASED ON DOCUMENTS KNOWN TO CONTAIN PRIMARY BOYCOTT CLAUSES (E.G., REQUIREMENT THAT GOODS/SERVICES

OF BOYCOTTED COUNTRY NOT BE IMPORTED INTO BOYCOTTING COUNTRY IN PROPOSED TRANSACTION). AS A NUMBER OF POSTS HAVE CORRECTLY POINTED OUT, U.S. FIRMS ARE PERMITTED TO COMPLY WITH SUCH A REQUIREMENT (EXCEPTING NEGATIVE CERTIFICATE OF ORIGIN REQUIREMENTS IN SHIPPING DOCUMENTS AFTER JUNE 21, 1978). IT IS OUR POSITION THAT U.S. FIRMS SHOULD BE ENCOURAGED TO NEGOTIATE ILLEGAL BOYCOTT CONDITIONS OUT OF POTENTIAL TRANSACTIONS. NO USEFUL PURPOSE WOULD BE SERVED BY DENYING THEM THE OPPORTUNITY TO DO SO. THE MATTER OF CONTINUED APPLICABILITY OF DEPARTMENT OF COMMERCE CIRCULAR 21 OF 11/26/75 (REF C) IS UNDER REVIEW BY THE DEPARTMENT OF COMMERCE.

D. POSTS MAY NOT SUPPLY TO ANY PERSON INFORMATION ABOUT WHETHER PERSONS ARE BLACKLISTED IN ANY CONTEXT IN WHICH SUCH INFORMATION MIGHT BE USED FOR PURPOSES OF COMPLIANCE WITH BOYCOTT REQUIREMENTS OR ENFORCEMENT OF SUCH REQUIREMENTS. INFORMATION WHICH POSTS MAY HAVE RE BLACKLISTING OF A PARTICULAR U.S. FIRM OR OTHER BOYCOTT-LIMITED OFFICIAL USE
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RELATED ACTIONS TAKEN OR CONTEMPLATED WITH RESPECT TO A PARTICULAR FIRM MAY BE SHARED WITH OFFICIALS OF THAT U.S. FIRM AND WITH ITS SUBSIDIARY, AFFILIATE OR AUTHORIZED REPRESENTATIVE.

E. IF POSTS PROPOSE TO MAKE ANY PROCUREMENT DECISIONS ON BASIS OF BOYCOTT CONSIDERATIONS, GUIDANCE SHOULD BE SOUGHT FROM DEPARTMENT AS TO POLICY/LEGAL IMPLICATIONS OF SUCH SELECTION. NOTHING CONTAINED IN FINAL REGULATIONS PREVENTS POSTS FROM CONTINUING WITH NORMAL PROCUREMENT BASED ON CRITERIA IN GENERAL USE IN NON-BOYCOTT SITUATIONS (E.G., PRICE, QUALITY, SERVICE, STANDARDIZATION).

F. ALTHOUGH ATTENTION HAS BEEN ON ARAB BOYCOTT OF ISRAEL, EAA FINAL REGULATIONS APPLY TO ALL FOREIGN BOYCOTTS UNLESS (AS IN CASE OF BOYCOTT OF RHODESIA) SANCTIONED BY USG.

G. EAA INTERPRETATION AND ENFORCEMENT IS NOT RPT NOT THE RESPONSIBILITY OF POSTS. ACCORDINGLY, POSTS SHOULD NOT GIVE ADVICE AS TO WHETHER PARTICULAR ACTIONS ARE OR ARE NOT IN COMPLIANCE WITH EAA REGULATIONS. POSTS MAY, OF COURSE, POINT OUT SECTIONS OF LAW OR REGULATIONS WHICH APPEAR TO HAVE APPLICABILITY AND SHOULD ADVISE U.S. PERSONS WHO HAVE CONTINUING UNCERTAINTY (OR WHOSE ACTIONS APPEAR TO RUN COUNTER TO GENERAL THRUST OF LAW OR REGULATIONS) TO SEEK INTERPRETATION OF THEIR SITUATION THOUGH LEGAL COUNSEL OR DIRECTLY FROM COMMERCE DEPARTMENT. (SEE REF D RE PROPOSED REGULATIONS ON

INTERPRETIVE LETTER PROCEDURES.)

H. WHERE QUESTIONS OF INTERPRETATION (E.G., RE LANGUAGE IN GENERAL USE IN LETTERS OF CREDIT, REQUESTS FOR BIDS, CONTRACTS, REGISTRATION OF PATENTS/TRADEMARKS, REGISTRATION OF AGENTS, INCORPORATION) HAVING BROAD APPLICATION LIMITED OFFICIAL USE
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TO U.S. BUSINESS DEALINGS IN HOST COUNTRY NEED TO BE ANSWERED OR WHERE HOST COUNTRY OFFICIALS SEEK INTERPRETATION FROM POSTS, QUESTIONS SHOULD BE FORWARDED BY POSTS USING CABLE MESSAGES WITH SUBJECT CAPTION, "FOREIGN BOYCOTTS: EAA REGULATIONS" ADDRESSED JOINTLY TO COMMERCE AND STATE.

I. POSTS SHOULD BRING TO ATTENTION OF ALL USG EMPLOYEES WHO ARE BEING REASSIGNED TO BOYCOTTING COUNTRIES THOSE PROVISIONS OF REGULATIONS WHICH MAY RELATE TO PROCUREMENT/SHIPMENT OF PERSONAL EFFECTS. WITH RESPECT TO ENTRY OF SUCH PERSONAL EFFECTS INTO BOYCOTTING COUNTRIES, WE EXPECT POSTS TO MAKE EVERY REASONABLE EFFORT TO OBTAIN AGREEMENT TO PERMIT ENTRY NOTWITHSTANDING MANUFACTURE BY BLACKLISTED FIRMS.

4. POSTS IN PAST COMMUNICATIONS HAVE ASKED NUMBER OF QUESTIONS RE APPLICABILITY OF PROPOSED EAA REGULATIONS. IN ALL CASES, LEGAL CULPABILITY DEPENDS ON WHETHER THE REQUISITE INTENT TO COMPLY WITH, FURTHER OR SUPPORT THE BOYCOTT IS PRESENT AND WHETHER THE ACTION IS TAKEN WITH INTENT TO EVADE THE LAW. LEGAL CULPABILITY ALSO DEPENDS ON WHETHER THE ACTIVITY IS SUBJECT TO THE JURISDICTION OF THE LAW IN THE FIRST INSTANCE. THEREFORE, CATEGORICAL ANSWERS TO QUESTIONS CANNOT BE GIVEN ON THE BASIS OF LESS THAN COMPLETE FACTS. ALL THE FACTS AND CIRCUMSTANCES OF A PARTICULAR TRANSACTION OR ACTIVITY MUST BE EVALUATED IN ORDER TO REACH DEFINITIVE CONCLUSIONS ON LEGAL CULPABILITY. WITH THAT CAVEAT, THE FOLLOWING QUESTIONS WITH ANSWERS BASED ON FINAL REGULATIONS ARE SUPPLIED FOR POSTS' INFORMATION AND USE:

A) WILL U.S. FIRM BE LIABLE UNDER EAA FOR BOYCOTT-RELATED LIMITED OFFICIAL USE
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ACTIONS TAKEN BY AGENT RESIDENT IN BOYCOTTING COUNTRY WHERE SUCH ACTIONS TAKE IN SELF-INTEREST OF AGENT AND NOT AT INSTRUCTION OF U.S. FIRM (E.G., SUPPLY BY AGENT TO GOVT. AGENCY, BANK OR FOREIGN BUYER OF A LOCAL BOYCOTT OFFICE CERTIFICATION THAT U.S. FIRM IS NOT BLACKLISTED)?

ANSWER: U.S. FIRM IS LIABLE FOR ACTIONS TAKEN ON ITS BEHALF BY ITS AGENT, REGARDLESS OF WHETHER PURSUANT TO U.S. FIRM'S INSTRUCTIONS. WHAT RESIDENT AGENT MAY DO IS GOVERNED IN PART BY EXCEPTION IN REGULATIONS COVERING ACTIVITIES OF BOYCOTTING COUNTRY RESIDENTS. FURTHER, U.S. FIRM'S RESPONSIBILITY WILL NOT ATTACH TO ACTIONS OF AGENT WHICH ARE CONTRARY TO HIS PRINCIPAL'S INSTRUCTIONS OR OUTSIDE THE SCOPE OF HIS AUTHORITY AS AGENT.

B) WILL U.S. FIRM BE PERMITTED TO CERTIFY IN SHIPPING DOCUMENT THAT GOODS WILL BE SHIPPED ON VESSEL PERMITTED TO CALL AT BOYCOTTING COUNTRY PORT?

ANSWER: MAY BE USED UNTIL JUNE 22, 1978. BUT U.S. FIRMS WILL BE ABLE TO CERTIFY THAT GOODS WILL BE SHIPPED ON A VESSEL WHICH DOES NOT CALL ON AN ISRAELI PORT EN ROUTE EVEN AFTER THAT DATE

C) WHEN WILL PROHIBITION AGAINST USE OF NEGATIVE, BLACKLISTING OR SIMILARLY EXCLUSIONARY TERMS REQUIRED BY IMPORTING COUNTRY IMPORT AND SHIPPING DOCUMENT REQUIREMENTS TAKE EFFECT IF SUCH CLAUSES APPEAR AS CONDITIONS IN LETTERS OF CREDIT?

ANSWER: JUNE 22, 1978.

D) WHAT ACTION MAY BE TAKEN BY U.S. FIRM (OR BY POST ON BEHALF OF FIRM) IN SITUATION WHERE COMPETITOR FIRM HAS ACCUSED U.S. FIRM THROUGH MEDIA OR IN COMMUNICATION WITH BOYCOTT OFFICE, GOVT. AGENCY, OR POTENTIAL PURCHASER LIMITED OFFICIAL USE
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OF VIOLATING HOST COUNTRY BOYCOTT RULES? MAY ACCUSATION BE DENIED? MAY SOURCE (USUALLY ANONYMOUS) BE IMPUGNED?

ANSWER: THIS IS AN EXTREMELY SENSITIVE AND COMPLICATED AREA. POSTS ARE REMINDED THAT GOVERNMENT PERSONNEL ARE THEMSELVES SUBJECT TO THE LAW AND ITS PENALTIES. PARTICULAR ATTENTION SHOULD BE PAID TO THE INFORMATION FURNISHING PROHIBITIONS.

FOR U.S. FIRMS THEMSELVES, TWO SITUATIONS MUST BE DISTINGUISHED: (A) U.S. FIRMS WHICH ARE NOT RESIDENTS OF BOYCOTTING COUNTRY; (B) U.S. FIRMS WHICH ARE RESIDENTS OF BOYCOTTING COUNTRY.

FINAL REGULATIONS PROVIDE THAT IT IS A VIOLATION OF THE LAW TO AGREE TO COMPLY WITH THE BOYCOTT LAWS OF A BOYCOTTING COUNTRY. HOWEVER, FINAL REGULATIONS PERMIT U.S. FIRMS RESIDENT IN BOYCOTTING COUNTRY TO COMPLY WITH

BOYCOTT LAWS OF THAT COUNTRY WITH RESPECT TO ACTIVITIES EXCLUSIVELY WITHIN THAT COUNTRY AND WITH RESPECT TO IMPORTS OF SPECIFICALLY IDENTIFIABLE PRODUCTS FOR THEIR OWN USE.

DENIAL OF ACCUSATION OF VIOLATION OF BOYCOTT LAWS IS NOT PER SE EITHER AN AGREEMENT TO COMPLY WITH BOYCOTT LAWS OR A PROHIBITED FURNISHING OF BOYCOTT INFORMATION, BUT

UNDER CERTAIN CIRCUMSTANCES COULD CONSTITUTE AN IMPLIED AGREEMENT TO COMPLY WITH SUCH LAWS, FOR EXAMPLE, WHERE DENIAL OF PAST VIOLATIONS IS REGARDED AS A PROMISE OF FUTURE CONFORMITY TO BOYCOTT LAWS. IF SO, FOR U.S. FIRMS NOT RESIDENT IN BOYCOTTING COUNTRY IT WOULD BE IN VIOLATION OF LAW.

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FOR U.S. FIRMS WHICH ARE RESIDENT IN BOYCOTTING COUNTRY, "ITHER AN EXPRESS OR IMPLIED AGREEMENT TO COMPLY WITH BOYCOTT LAWS WITH RESPECT TO ACTIVITIES EXCLUSIVELY WITHIN THE COUNTRY OR WITH RESPECT TO IMPORTS OF SPECIFICALLY IDENTIFIABLE PRODUCTS FOR OWN USE IS NOT A VIOLATION OF LAW, BUT IF SUCH AGREEMENT, WHETHER EXPRESS OR IMPLIED, EXTENDS TO OTHER BOYCOTT LAWS, THEN A VIOLATION OF THE LAW MIGHT OCCUR. THEREFORE, ANY DENIAL OF PAST VIOLATIONS BY U.S. FIRMS RESIDENT IN BOYCOTTING COUNTRY WOULD HAVE TO BE CAREFULLY PHRASED AND DELIVERED IN A CONTEXT WHICH CREATES NO IMPLIED PROMISE OF CONFORMITY WITH BOYCOTT LAWS FOR OTHER THAN ACTIVITIES EXCLUSIVELY WITHIN THE COUNTRY OR FOR IMPORTS OF SPECIFICALLY IDENTIFIABLE GOODS FOR THE U.S. FIRM'S OWN USE.

WITHIN THESE GENERAL CONSIDERATIONS, CATEGORICAL GUIDANCE IMPOSSIBLE BECAUSE OF THE WIDE VARIETY OF CIRCUMSTANCES WHICH COULD EXIST.

E) WHAT ACTION MAY A U.S. FIRM TAKE UPON RECEIPT OF REQUEST FOR BIDS WHICH CONTAINS PRIMARY BOYCOTT CLAUSE (I.E., GOODS AND SERVICES OF BOYCOTTED COUNTRY TO BE EXCLUDED)? MAY FIRM BID? MUST IT TAKE EXCEPTION?

ANSWER: FIRM MAY BID. CLAUSE THAT GOODS OR SERVICES FROM BOYCOTTED COUNTRY WILL NOT BE INCLUDED IN THE TRANSACTION IS NOT A VIOLATION OF LAW.

F) WHAT ACTION MAY A U.S. FIRM TAKE UPON RECEIPT OF REQUEST FOR BIDS WHICH CONTAINS SECONDARY OR SO-CALLED TERTIARY BOYCOTT CLAUSES (E.G., GOODS/SERVICES OF BLACKLISTED FIRMS OR USE OF BLACKLISTED VESSELS TO BE EXCLUDED)? MAY FIRM BID? MUST IT TAKE EXCEPTION?

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ANSWER: FIRM MAY BID BUT MUST MAKE IT CLEAR THAT IF
BID ACCEPTED, ILLEGAL BOYCOTT CONDITIONS MAY NOT BE
AGREED TO OR COMPLIED WITH. CLAUSE THAT GOODS OR
SERVICES OF BLACKLISTED FIRMS OR VESSELS WILL BE
EXCLUDED IS A VIOLATION OF LAW.

G) WHAT EFFECT WHERE A LETTER OF CREDIT REQUIRES ONLY
A POSITIVE CERTIFICATE OF COUNTRY ORIGIN THOUGH INSTRUC-
TION ATTACHED TO LETTER OF CREDIT CONTAINS CLEAR
STATEMENT THAT GOODS OF BOYCOTTED COUNTRY ARE PROHIBITED
FROM ENTERING COUNTRY OF DESTINATION?

ANSWER: POSITIVE CERTIFICATE OF COUNTRY OF ORIGIN MAY
GENERALLY BE SUPPLIED. AGREEMENT NOT TO IMPORT GOODS
OF BOYCOTTED COUNTRY IN PARTICULAR TRANSACTION IS ALSO
PERMISSIBLE. THEREFORE, IT MAKES NO DIFFERENCE THAT
EITHER THE LETTER OF CREDIT BENEFICIARY OR IMPLEMENTING
BANK KNOWS THAT GOODS OF BOYCOTTED COUNTRY MAY NOT BE
INCLUDED IN SHIPMENT.

5. FOR NEA POSTS IN COUNTRIES WHICH APPLY SECONDARY
BOYCOTT AGAINST BLACKLISTED U.S. FIRMS: YOU ARE
REQUESTED TO:

-- SUPPLY TEXT OF FINAL REGULATIONS TO APPROPRIATE HOST
COUNTRY OFFICIALS.

-- EXPRESS SATISFACTION THAT NON-CONFRONTATIONAL APPROACH
HAS BEEN FOLLOWED BY BOTH OUR GOVERNMENTS IN HANDLING
CLEAR DIFFERENCES WHICH EXIST BETWEEN US OVER BOYCOTT
ISSUES.

-- NOTE THAT MANY CHANGES NEEDED TO ALLOW MUTUALLY
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BENEFICIAL ECONOMIC AND COMMERCIAL RELATIONSHIPS TO BE
MAINTAINED AND STRENGTHENED HAVE ALREADY BEEN TAKEN ON AN
AD HOC BASIS BY U.S. FIRMS AND ARAB GOVERNMENTS OR
BUSINESSMEN. CHANGES WHICH HAVE TAKEN U.S. FIRMS OUT

OF ACTIVE ROLE IN SUPPLY OF BOYCOTT-TYPE CERTIFICATIONS
AND SELECTION OF COMPONENTS OR SUBCONTRACTORS ON BASIS
OF BOYCOTT CONSIDERATIONS NONETHELESS LEAVE IMPORTING
COUNTRIES FREE TO DETERMINE WITH WHOM THEY WILL DO
BUSINESS.

-- STRESS THAT IT HAS BEEN USG OBJECTIVE FROM TIME OF HEARINGS ON ANTI-BOYCOTT LEGISLATION EARLY THIS YEAR THROUGH THE WRITING OF FINAL REGULATIONS TO CURB INTRUSIONS OF BOYCOTT PRACTICES INTO U.S. COMMERCE WITHOUT CHALLENGING RIGHTS WHICH FOREIGN GOVERNMENTS MAY EXERCISE TO REGULATE THEIR OWN COMMERCE, INCLUDING DESTINATION OF THEIR EXPORTS AND SOURCE OF THEIR IMPORTS.

-- URGE THAT CHANGES WHICH HAVE BEEN TAKEN ON AN AD HOC BASIS BE GENERALIZED SO THAT SMALLER FIRMS AND OTHER FIRMS NEW TO THE BOYCOTTING COUNTRY MARKET WILL NOT BE DISADVANTAGED IN FAVOR OF LARGER AND MORE FAMILIAR FIRMS WHICH HAVE ALREADY BEEN ABLE TO MAKE THE ADJUSTMENTS NEEDED TO CONFORM WITH BOTH U.S. AND BOYCOTTING COUNTRY LAWS AND REGULATIONS.

-- MAKE BEST EFFORTS TO AID U.S. FIRMS EITHER ON CASE-BY-CASE BASIS OR THROUGH EFFORTS TO OBTAIN POLICY CHANGES BY GOVTS, BANKS, CHAMBERS OF COMMERCE, BOYCOTT OFFICES, ETC., WHERE EXISTING POLICIES AND PRACTICES IMPEDE EXPANSION OF MUTUALLY BENEFICIAL COMMERCIAL RELATIONSHIPS. FOR EXAMPLE, WHERE PROBLEMS ARISE FROM:

- RISK THAT U.S. FIRMS, UNABLE TO RESPOND TO BOYCOTT INQUIRIES, MAY BE BLACKLISTED BECAUSE OF ACCUSATIONS BY LIMITED OFFICIAL USE
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COMPETITORS.

- CONTINUING USE OF NEGATIVE CERTIFICATIONS IN LETTERS OF CREDIT, SHIPPING DOCUMENTS, CONTRACTS, AGENCY REGISTRATIONS, APPLICATIONS TO INCORPORATE, PATENT/TRADEMARK REGISTRATIONS, ETC.

- CONTINUING ATTEMPT TO HAVE BOYCOTT-BASED SELECTIONS MADE BY NON-RESIDENT U.S. FIRMS.

- USE OF BOYCOTT QUESTIONNAIRES GENERALLY.

-- WARN ALL U.S. GOVERNMENT PERSONNEL THAT THE LAW APPLIES TO THEM AND THAT THEY MAY BE SUBJECT TO PENALTIES FOR VIOLATIONS.

-- FACILITATE ENTRY OF PERSONAL EFFECTS/AUTOS OF USG EMPLOYEES WHEN BOYCOTT PROBLEMS ARISE.

7. ALL ADDRESSEE POSTS ARE REQUESTED TO REPORT FULLY ON HOST COUNTRY REACTIONS, IF ANY, TO FINAL EAA REGULATIONS AND ON SPECIFIC TYPES OF PROBLEMS FACED BY U.S. FIRMS (INCLUDING THEIR CONTROLLED SUBSIDIARIES AND AFFILIATES)

IN EFFORTS TO CONFORM TRANSACTIONS TO EAA REGULATIONS AND
HOST COUNTRY LAWS. ALSO REQUEST ANY INFORMATION
AVAILABLE FROM MIDDLE EAST POSTS CONCERNING PLANS BY
ARAB LEAGUE BOYCOTT COMMISSIONERS FOR MEETING OF BOYCOTT
CONFERENCE POSTPONED LAST DECEMBER. VANCE

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Message Attributes

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Copy: SINGLE
Draft Date: 04 feb 1978
Decaption Date: 01 jan 1960
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Disposition Approved on Date:
Disposition Case Number: n/a
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Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t197802120/baaafbsv.tel
Line Count: 549
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Message ID: e59ab5cf-c288-dd11-92da-001cc4696bcc
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Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 18 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3474886
Secure: OPEN
Status: <DBA CORRECTED> gwr 970826
Subject: FOREIGN BOYCOTTS: FINAL EXPORT ADMINISTRATION ACT REGULATIONS
TAGS: ETRD, US
To: ALL DIPLOMATIC POSTS BAGHDAD MULTIPLE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/e59ab5cf-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
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20 Mar 2014
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